MONTANA LEGISLATIVE HISTORY

Chapter 74 1999

Bill H 121 S _____ Original bill & history ✓ C

H. Committee on Business & Labor

Hearing Date(s) 1-20-99 ✓ C

1-26-99 ✓ C

_____ ___ C

_____ ___ C

Date Out _____ ___ C

S. Committee on Business & Industry

Hearing Date(s) 3-4-99 ✓ C

3-8-99 — C

_____ ___ C

_____ ___ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HB 121 Introduced by Krenzler *LC0410 Drafter: B. Campbell*

Prohibit Pyramid Promotion Schemes and Provide Criminal Penalties;...

By Request of State Auditor

11/02	Fiscal Note Needed		
12/21	Introduced		
1/04	1st Reading		
1/04	Referred to Business and Labor		
1/04	Fiscal Note Requested		
1/09	Fiscal Note Received		
1/11	Fiscal Note Signed		
1/12	Fiscal Note Printed		
1/20	Hearing		
1/26	Committee Executive Action--Bill Passed as Amended	18	0
1/27	Committee Report--Bill Passed as Amended		
1/29	2nd Reading Passed	87	11
1/30	3rd Reading Passed	86	10
	Transmitted to Senate		
2/01	Referred to Business and Industry		
3/04	Hearing		
3/08	Committee Executive Action--Bill Concurred	6	0
3/08	Committee Report--Bill Concurred		
3/09	2nd Reading Concurred	50	0
3/10	3rd Reading Concurred	50	0
	Returned to House		
3/10	Sent to Enrolling		
3/11	Returned from Enrolling		
3/12	Signed by Speaker		
3/13	Signed by President		
3/15	Transmitted to Governor		
3/16	Signed by Governor		
3/17	Chapter Number Assigned		
	Chapter Number 74		
	Effective Date: 10/01/1999 - All Sections		

HB 122 Introduced by Jore *LC0815 Drafter: McClure*

Create the Workers' Freedom Act;...

12/21	Introduced		
1/04	1st Reading		
1/04	Referred to Business and Labor		
1/04	Fiscal Note Requested		
1/11	Fiscal Note Received		
1/11	Fiscal Note Signed		
1/12	Fiscal Note Printed		
1/13	Hearing		
1/13	Tabled in Committee	14	4
3/01	Missed Deadline for General Bill Transmittal		

HB 123 Introduced by Menahan *LC0400 Drafter: B. Campbell*

Provide That the State's Share of County Attorney Salaries Be Paid Every 2 Weeks Instead of Monthly;...

HOUSE BILL NO. 121

INTRODUCED BY KRENZLER B

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING PYRAMID PROMOTION SCHEMES AND PROVIDING CRIMINAL PENALTIES; AND REQUIRING MULTILEVEL DISTRIBUTION COMPANIES TO FILE A NOTICE OF ACTIVITY WITH THE SECURITIES COMMISSIONER AND TO CONSENT TO SERVICE OF PROCESS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) (a) "Multilevel distribution company" means a person that:

(i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

(ii) may recruit other participants in the company; and

(iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds,

dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.

(4) "Participant" means a person involved in a sales plan or operation.

(5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme does not include a sales plan or operation that:

(i) does not compensate a participant solely for obtaining the participation of other persons in the sales plan or operation;

(ii) subject to the provisions of subsection (6)(b)(vi), provides compensation to a participant based upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

(iii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iv) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

(v) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation plan; and

(C) provides that if the person cancels participation within the time provided and returns any

required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(vi) (A) provides for, upon the request of a participant deciding to terminate participation in the sales plan or operation, the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (6)(b)(vi) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase.

NEW SECTION. **Section 2. Operating pyramid promotional scheme unlawful.** (1) A person may not conduct or promote or cause to be conducted or promoted a pyramid promotional scheme.

(2) A person who violates the provisions of subsection (1) shall be fined an amount not more than $10,000 or be imprisoned for not more than 10 years, or both.

NEW SECTION. **Section 3. Notice of activity -- consent to service.** (1) A multilevel distribution company doing business in this state or that includes a participant that is a resident of this state shall file annually with the securities commissioner notice of its presence in the state on a form prescribed by the commissioner and designating the commissioner as its agent for service of process for any alleged violation of [section 2].

(2) The commissioner may require a multilevel distribution company to:

(a) disclose the names, addresses, and titles of the multilevel distribution company's officers, directors, and trustees; and

(b) file a detailed description of the levels of distribution in the multilevel distribution company, the manner of compensating participants, and the extent or amount of the compensation.

NEW SECTION. **Section 4. Codification instruction.** [Sections 1 through 3] are intended to be

codified as an integral part of Title 30, chapter 10, and the provisions of Title 30, chapter 10, apply [sections 1 through 3].

- END -

FISCAL NOTE

Bill #: HB0121 **Title:** Pyramid scheme prohibition and establishing criminal penalties

Primary Sponsor: Billie Krenzler **Status:** As introduced

Billie Krenzler 1-11-99
Sponsor signature Date

Dave Lewis 1-8-99
Dave Lewis, Budget Director Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:		
General Fund	$5,000	$5,000
Revenue:		
General Fund	$10,000	$10,000
Net Impact on General Fund Balance:	**$5,000**	**$5,000**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. This bill becomes effective October 1, 1999.
2. Multilevel distribution companies are not currently regulated in Montana. The Department of Commerce received approximately 75 complaints/inquiries during FY 1998, and the State Auditor's Office (SAO) received more than 600 complaints/inquiries identifying more than 97 multilevel distributions companies doing business in Montana during FY 1998. The SAO will handle all 675 complaints/inquiries. This will result in 10 additional investigations per year, two of which will result in fines and one of which will go to a contested hearing.
3. The SAO has investigated five pyramid promotional schemes in the past three years, involving more than 4,500 Montana victims, which resulted in two contested hearings and one permanent order.

HB 121

4. The SAO will create and maintain a system for notice filings by multilevel distribution companies which will be integrated into the agency's current database system.
5. The fine for operating a pyramid promotional scheme is $10,000. The fine for conducting multilevel distribution business without filing a notice of activity is $5,000. Fines are estimated to be $10,000 in both FY 2000 and FY 2001.
6. Passage of the bill will not require any additional FTE. Hearing and preparation costs will average $5,000 per hearing.

FISCAL IMPACT:

	FY2000 Difference	FY2001 Difference
Expenditures:		
Operating Expenses	$5,000	$5,000
Funding:		
General Fund (01)	$5,000	$5,000
Revenues:		
General Fund (01)	$10,000	$10,000
Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	$5,000	$5,000

HB 100 SPONSOR: Simon, Bruce SHORT TITLE: Generally revise laws administered by the state auditor

BY REQUEST OF: State Auditor
REFERRED ON: 12/23/1998 HEARD ON: 01/11/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 16 - 2
TABLED ON: 01/11/1999
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 101 SPONSOR: Bookout-Reinicke, Sylvia SHORT TITLE: Revise Board of Plumbers membership

BY REQUEST OF: Department Of Environmental Quality
BY REQUEST OF: Department Of Public Health And Human Services
REFERRED ON: 12/23/1998 HEARD ON: 01/11/1999
EXECUTIVE ACTION: 01/11/1999 Bill Passed -- VOTE: 18 - 0
FINAL DISPOSITION 03/16/1999 Chapter Number Assigned

HB 109 SPONSOR: Mercer, John SHORT TITLE: Allow Dept of Justice automated video gambling, accounting and reporting system

BY REQUEST OF: Department Of Justice
REFERRED ON: 12/23/1998 HEARD ON: 01/12/1999
EXECUTIVE ACTION: 01/12/1999 Bill Passed as Amended -- VOTE: 18 - 0
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 112 SPONSOR: Hedges, Donald SHORT TITLE: Fines for cosmetology inspection violations

BY REQUEST OF: Board Of Cosmetologists
REFERRED ON: 12/23/1998 HEARD ON: 01/11/1999
TABLED ON: 01/11/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

---

HB 121 SPONSOR: Krenzler, Billie SHORT TITLE: Pyramid scheme prohibition and establishing criminal penalties

BY REQUEST OF: State Auditor
REFERRED ON: 01/04/1999 HEARD ON: 01/20/1999
EXECUTIVE ACTION: 01/26/1999 Bill Passed as Amended -- VOTE: 18 - 0
FINAL DISPOSITION 03/17/1999 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on January 20, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 4 (1/14/99) HB 121, HB 154, HB 156, HB 181, 1/8/1999
Executive Action: SB 4, HB 154, HB 156

HEARING ON SB 4

Opening Statement by Sponsor: Sen. Mahlum, SD 35 introduced SB 4.
{Tape : 1; Side : A; Approx. Time Counter : 0 - 51}

Proponents' Testimony:
Andy Poole, Deputy Director Dept of Commerce
{Tape : 1; Side : A; Approx. Time Counter : 51 - 67}

Opponents' Testimony: No Opponents

Questions from Committee Members and Responses:
Rep. Masolo questions Mr. Poole
{Tape : 1; Side : A; Approx. Time Counter : 67 - 73}

Closing by Sponsor: Sen. Mahlum closed SB 4.
{Tape : 1; Side : A; Approx. Time Counter : 73 - 98}

HEARING ON HB 121

Opening Statement by Sponsor: Rep. Krenzler, HD 17 introduced HB 121.
{Tape : 1; Side : A; Approx. Time Counter : 98 - 141}

Proponents' Testimony:
Beth O'Halleron, Montana State Auditor's Office, Securities Division. **EXHIBIT(2) EXHIBIT(3)**
{Tape : 1; Side : A; Approx. Time Counter : 141 - 191}

Betty Beverly, Montana Sr. Citizens Assn.
{Tape : 1; Side : A; Approx. Time Counter : 191 - 200}

Theresa Jennings, Sr. attorney for Direct Selling
{Tape : 1; Side : A; Approx. Time Counter : 200 - 210}

Mike Bennett, Vice Pres. of Corporate Affairs Long and Bergers.
{Tape : 1; Side : A; Approx. Time Counter : 210 - 222}

Dick Bloomendahl, Amway **EXHIBIT(1)**
{Tape : 1; Side : A; Approx. Time Counter : 222 - 227}

Irene Theurer, AARP
{Tape : 1; Side : A; Approx. Time Counter : 227 - 233}

Selma Manley, Bozeman resident
{Tape : 1; Side : A; Approx. Time Counter : 233 - 280}

Judy Williams, Toston, MT
{Tape : 1; Side : A; Approx. Time Counter : 280 - 292}

Brad Griffin, Montana Direct Sales Assn. **EXHIBIT(4) EXHIBIT(5)**
{Tape : 1; Side : A; Approx. Time Counter : 292 - 303}

Opponents' Testimony: None

Questions from Committee Members and Responses:
Reps. Ewer, Stovall, Brown, Pavlovich, Simon question proponents.
{Tape : 1; Side : A; Approx. Time Counter : 303 - 500}

Closing by Sponsor: Rep. Krenzler closed HB 121.
{Tape : 1; Side : B; Approx. Time Counter : 0 - 43}

HEARING ON HB 154

Opening Statement by Sponsor: Rep. Gallus, HD 35 introduced HB 154. **EXHIBIT(6)**
{Tape : 1; Side : B; Approx. Time Counter : 43 - 71}

Proponents' Testimony:
Frank Cote, Dep. Insurance Commissioner, State Auditor Office.
{Tape : 1; Side : B; Approx. Time Counter : 71 - 98}

Tom DeBoer, Montana body shop owner.
{Tape : 1; Side : B; Approx. Time Counter : 98 - 123}

Ron Ashabrann, State Farm Insurance
{Tape : 1; Side : B; Approx. Time Counter : 123 - 129}

John Metropolis, Farmers Insurance Group
{Tape : 1; Side : B; Approx. Time Counter : 129 - 137}

Anne Bartos, Attorney for Dept. of Commerce
{Tape : 1; Side : B; Approx. Time Counter : 137 - 145}

Truman Strouf, MT Federation of Glass Dealers
{Tape : 1; Side : B; Approx. Time Counter : 145 - 150}

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on January 26, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 294, HB 312, HB 320, HB 328, SB 21, 1/18/1999
Executive Action: SB 21, HB 121, HB 245, HB 297, HB 302, HB 306, HB 321, HB 322

EXECUTIVE ACTION ON HB 121

Motion: REP. KRENZLER moved that HB 121 DO PASS.
{Tape : 3; Side : A; Approx. Time Counter : 54 - 69}

Motion/Vote: REP. KRENZLER moved that HB 121 BE AMENDED. EXHIBIT(21) Motion carried unanimously.
{Tape : 3; Side : A; Approx. Time Counter : 69 - 81}

Motion/Vote: REP. JUNEAU moved that HB 121 DO PASS AS AMENDED. Motion carried unanimously.
{Tape : 3; Side : A; Approx. Time Counter : 81 - 86}

EXECUTIVE ACTION ON HB 245

Motion: REP. SIMON moved that HB 245 DO PASS.
{Tape : 3; Side : A; Approx. Time Counter : 86 - 90}

Motion/Vote: REP. SIMON moved that HB 245 BE AMENDED. Motion carried unanimously. EXHIBIT(22)
{Tape : 3; Side : A; Approx. Time Counter : 90 - 100}

Motion/Vote: REP. SIMON moved that HB 245 DO PASS AS AMENDED. Motion carried unanimously.
{Tape : 3; Side : A; Approx. Time Counter : 100 - 155}

HEARING ON HB 294

Opening Statement by Sponsor: Rep. Lawson, HD 80 introduced HB 294. *{Tape : 3; Side : A; Approx. Time Counter : 155 - 257}*

Proponents' Testimony:
Frank Cote, Dep. Director of Insurance, State Auditor
{Tape : 3; Side : A; Approx. Time Counter : 257 - 274}

Opponents' Testimony:
Roger McGlen, Independent Insurance Agents of Montana
{Tape : 3; Side : A; Approx. Time Counter : 274 - 400}

Greg Van Horrsen, State Farm Insurance
{Tape : 3; Side : A; Approx. Time Counter : 400 - 498}

HB 121 SPONSOR: Krenzler, Billie SHORT TITLE: Pyramid scheme prohibition and establishing criminal penalties
BY REQUEST OF: State Auditor
REFERRED ON: 02/01/1999 HEARD ON: 03/04/1999
EXECUTIVE ACTION: 03/08/1999 Bill Concurred -- VOTE: 6 - 0
FINAL DISPOSITION 03/17/1999 Chapter Number Assigned

HB 150 SPONSOR: Menahan, Red SHORT TITLE: Require contracting foreign companies to receive a certificate of authority
BY REQUEST OF: Secretary Of State
REFERRED ON: 02/04/1999 HEARD ON: 03/02/1999
EXECUTIVE ACTION: 03/08/1999 Bill Concurred as Amended -- VOTE: 6 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 153 SPONSOR: Hedges, Donald SHORT TITLE: Revise laws governing funeral services
BY REQUEST OF: Board Of Funeral Service
REFERRED ON: 02/03/1999 HEARD ON: 03/04/1999 (S) Discussed in Committee ON: 03/10/1999
(S) Discussed in Committee ON: 03/17/1999
EXECUTIVE ACTION: 03/23/1999 Bill Concurred as Amended -- VOTE: 7 - 0
TABLED ON: 03/08/1999
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

HB 154 SPONSOR: Gallus, Steven SHORT TITLE: Clarify prohibition against auto repair incentives
BY REQUEST OF: State Auditor
REFERRED ON: 01/27/1999 HEARD ON: 03/04/1999
EXECUTIVE ACTION: 03/09/1999 Bill Concurred -- VOTE: 6 - 0
FINAL DISPOSITION 03/27/1999 Chapter Number Assigned

HB 155 SPONSOR: Pavlovich, Bob SHORT TITLE: Prohibit the cancellation or nonrenewal of property & casualty insurance
BY REQUEST OF: State Auditor
REFERRED ON: 01/29/1999 HEARD ON: 03/05/1999
EXECUTIVE ACTION: 03/08/1999 Bill Concurred as Amended -- VOTE: 6 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 167 SPONSOR: Johnson, Royal SHORT TITLE: Revise statutes affected by termination of Old Fund Liability Tax Jan 1,1999
REFERRED ON: 01/27/1999
FINAL DISPOSITION 03/30/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 4, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 121, 2/19/1999
HB 153, 2/19/1999
HB 154, 2/19/1999

Executive Action:

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HB 121

Sponsor: **REP. BILLIE I. KRENZLER, HD 17, BILLINGS**

Proponents: **Beth O'Halloran, Staff Attorney, State Auditor**
Teresa Jennings, Direct Selling Assoc.
Dick Bloemendaal, Corporate Counsel, Amway Corp.
Lyla Knutson, AARP
Kelley Hubbard, MT Senior Citizens Assoc.
Brad Griffin, MT Retailers Assoc.
Annie Bartos, Chief Counsel, Department of Commerce

Opponents: **Mike Fellows, MT Libertarians**

Opening Statement by Sponsor:

REP. BILLIE I. KRENZLER, HD 17, BILLINGS. This bill gets a handle on pyramid schemes, which are a type of fraud perpetrated on the telephone, the Internet or face-to-face. Collapse of pyramid schemes is inevitable and when it happens, Montana citizens have lost their hard-earned money. This bill is offered with the support of the multi-level distribution industry, consumers and regulators. It establishes a framework for enforcement and investigation of pyramid schemes in light of the recent developments in the law and in the industry of multi-level marketing. The major components are prohibiting and criminalizing the promotion of a pyramid scheme and the filing of a notice of activity and consent to service and process by multi-level distribution companies. This bill is drafted to protect both the consumer and the legitimate multi-level companies.

Proponents' Testimony:

Beth O'Halloran, State Auditor. Normally the State Auditor's office investigates and prosecutes pyramid schemes under the jurisdiction we assume over securities. The pyramid issues that arise when we attempt to prosecute them as securities, is gone after a certain period of time. These days, pyramid companies try to disguise themselves as legitimate multi-level marketing companies, which perpetuates the criminal enterprise. We desire to take cases to county attorneys with clear cut elements and updated definitions of pyramid schemes and **HB 121** helps us do that. In developing this legislation, we've worked with the Direct Selling Association and its members to prevent an over-

broad approach, which would unfairly inhibit legitimate business. The bill defines & criminalizes the pyramid promotional scheme and gives filing requirements by multi-level distribution companies. Using this tool gives us the luxury of preventing the proliferation of bad-actor schemes by determining who hasn't filed with our office. We can compel filing of the documents or order cessation of operations if the filing isn't made. This bill will cost very little to the state because we already investigate and prosecute and it also makes it easier to deal with cases more efficiently and effectively. I urge you to support **HB 121**. I will leave copies of **EXHIBIT(1)**, **EXHIBIT(2)** and **EXHIBIT(3)** with each member.

Teresa Jennings, Direct Selling Association. She read her written testimony **EXHIBIT(4)**.

Dirk Bloemendaal, Amway Corporation. He read his written testimony **EXHIBIT(5)**.

Lyla Knutsen, AARP. We fully support the bill.

{Tape : 1; Side : A; Approx. Time Counter : 8}

Kelley Hubbard, Montana Senior Citizens Association (MSCA). We support this bill and would like to see it pass.

Brad Griffin, Montana Retail Association. We share many of the members with Direct Selling Association and we appreciate the sponsor bringing it forward. We think it draws a definite distinction between fraudulent outfits and legitimate businesses. We urge your support.

Annie Bartos, Department of Commerce. Our Consumer Affairs office works closely with the State Auditor's office on consumer protection issues. We believe **HB 121** is a good bill and urge its support.

<u>Opponents' Testimony</u>:

Mike Fellows, Montana Libertarian Party. I will read you a letter from Judy Bolton expressing opposition for **HB 121** **EXHIBIT(6)**. The worst pyramid scheme in this country is Social Security and I wish our State Auditor would do something about

it. The bill will require people who buy products from Amway, Shaklee, Avon, etc., to register in the state and I think that's wrong; therefore, we oppose the bill. We want to get rid of the folks who harm others and promote the scams but that can be done without requiring the whole society to register with the state.

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked if it was all distributors who have to be registered, or was it just the company. **Beth O'Halloran** said only the company would be required to register; not individual distributors.

SEN. SPRAGUE asked why the bill would cost $5,000 to administer. It seemed to him registered companies would display a logo, sign, or whatever, and if a company didn't have it, it couldn't file and would be easy to prosecute. **Ms. O'Halloran** said the $5,000 was a positive impact on the General Fund because they were anticipating additional revenue through ease of prosecution. As for the registering, it was more of a notice filing the company was doing business in Montana. They anticipated the filing would be done by legitimate companies.

SEN. SPRAGUE said pyramids were illegal at the federal level but some saw multi-level marketing as an upside-down pyramid. How was the public going to be educated on what constituted a pyramid? **Ms. O'Halloran** said they were trying to educate the public about pyramid schemes through its website and prosecutions; however, what ultimately comes out is the difference between a legitimate and illegitimate business is pyramid schemes recruit people who purchase the right to recruit other people to make compensation off the recruitment.

SEN. SPRAGUE asked if the bill would make the State Auditor's office the Better Business Bureau. **Beth O'Halloran** said it didn't go to that level; in fact, consumers were already calling them to find out whether insurance producers are registered in Montana, whether they're in good standing, etc. They anticipated consumers calling their department whether certain multi-level distribution companies filed with the state or if there was an investigation underway.

{Tape : 1; Side : A; Approx. Time Counter : 17.6}

SEN. BEA MCCARTHY asked **Teresa Jennings** for comment. She said the Direct Selling Association had an education foundation which put together a booklet which identified four factors that distinguish between a pyramid scheme and legitimate multi-level marketing. A pyramid scheme will generally have high introductory costs because they want to get their money up-front; whereas, a legitimate company wants to keep the up-front money low so it encourages people to try direct selling. Pyramid schemes pay on recruitment of people while legitimate multi-level companies pay not only on recruitment but also on sales. Pyramid schemes don't have legitimate retail sales nor does it give money back, as legitimate companies do.

SEN. GLENN ROUSH asked if the bill gave the consumer the benefit of the compensation. **Ms. Jennings** said the bill benefitted Montana consumers, State Auditor's office and companies trying to do legitimate business. "Compensation" is defined because it's used in the substance of the bill; however, "compensation" didn't mean someone was getting a benefit. **SEN. ROUSH** commented the consumers in his district were being misled.

SEN. VICKI COCCHIARELLA referred to **EXHIBIT 2** and asked if **Beth O'Halloran** handed it out. **Ms. O'Halloran** said their office was on a list to receive FAXes and the type of program in **EXHIBIT 2** was what they wanted to look hard at.

SEN. COCCHIARELLA asked how the State Auditor's office would keep track of the FAXes received and how they would know who was doing what. **Beth O'Halloran** said they would initially send out a letter of inquiry to determine what the program was so they would know, whether or not, it was legitimate. Then they would determine if the program had filed with the state and would work with them if they hadn't, because that would help determine their legitimacy.

SEN. COCCHIARELLA asked how consumers would know this protection was there. **Ms. O'Halloran** said once the bill was passed, they would do public outreach and encourage people to call if they had a question. They try to catch these programs before someone gets hooked but it can't be done if they're operating on a complaint by a person after it happened. This bill allows us to be a little more preventative.

Closing by Sponsor:

REP. KRENZLER closed. I believe anyone who is opposed to this bill doesn't fully understand it because it protects the rights of the consumer as well as those of the legitimate business. It draws clear lines between the legitimate multi-level marketers and the pyramid schemes. It will also provide a law for the enforcement tools necessary to go after the scam artists. If your constituents have questions, I would be happy to send them some information.

{Tape : 1; Side : A; Approx. Time Counter : 28.7}

HEARING ON HB 153

Sponsor: **REP. DONALD HEDGES, HD 97, ANTELOPE**

Proponents: **David Fulkerson, Chairman, Board of Funeral Services**
Jered Scherer, Board of Funeral Services
Robert Throssell, MT Assoc. of Clerks & Recorders
Jean Ruppert, Board of Funeral Services
Steve Yeakel, Executive Director, MT Funeral Directors Assoc.

Opponents: **Jock Anderson, Loewen Group**

Opening Statement by Sponsor:

REP. DONALD HEDGES, HD 97, ANTELOPE. This bill has been in the making for three or four years through the Board of Funeral Services. The meat of the bill is the pre-need funeral arrangements and is included because the Board of Funeral Services believed they had management surveillance over those doing pre-need. However, some of the funeral homes felt those contracts could be made by those in the industry that weren't licensed morticians. This opened the door for eventual court hearings. This bill addresses that issue and requires pre-need funeral contracts to be handled by a licensed funeral director or mortician. The reason for this is current statute allows that under general supervision of a licensed mortician a person could write pre-need contracts.

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 8, 1999 at 10:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:
Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: HB 63; HB 121; HB 150; HB 154; HB 155; HB 171; HB 153

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB 63

Motion: **SEN. COCCHIARELLA moved that HB 63 BE CONCURRED IN.**

SEN. ROUSH asked about the Advisory Committee from another bill. That was a good bill. He felt that the Advisory Committee should have more power and wondered if they would have any bearing on this bill in relationship to updating codes.

Mr. Kembel said that would help. He had worked with **REP. BRUCE SIMON** on that particular piece of legislation. There were some who wanted to see the Advisory Committee become similar to a licensing board authority, and that the Department of Commerce would have to take their recommendations to them. That would require a complete rewriting of HB 245. It does give the Advisory Committee more stature.

Vote: **Motion carried 4-2 with SEN. BERRY AND SEN. ROUSH voting no.**

Motion/Vote: **SEN. COCCHIARELLA moved that HB 63 BE CONCURRED IN AS AMENDED. Motion carried 4-2 with SEN. BERRY and SEN. ROUSH voting no.**

SEN. VICKI COCCHIARELLA will carry the bill on the Senate Floor.

{Tape : 1; Side : A; Approx. Time Counter : 31.6}

EXECUTIVE ACTION ON HB 121

Motion/Vote: **SEN. MCCARTHY moved that HB 121 BE CONCURRED IN. Motion carried unanimously. 6-0**

SEN. BEA MCCARTHY will carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 150

Motion: **SEN. MCCARTHY moved that HB 150 BE CONCURRED IN.**

Discussion: Motion/Vote: **SEN. MCCARTHY moved that HB 150 BE AMENDED EXHIBIT(bus52a02). Motion carried unanimously. 6-0**

Motion/Vote: **SEN. MCCARTHY moved that HB 150 BE CONCURRED IN AS AMENDED. Motion carried unanimously. 6-0**